



30 December 2020

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Our ref: 66/2020

Subject: Appeal in relation to afforestation licence CN85325

Dear [Redacted]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CN85325.

The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Licence CN85325 for afforestation of 7.73 ha and fencing of 1,000 m at Lavareen, Derrindrehid, Co. Leitrim was granted by the Department on 30/1/2020.

Hearing

An oral hearing of appeal 066/2020 was conducted by the FAC on 15/12/2020.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
Appellant:	[Redacted]
Applicant representative:	[Redacted]
DAFM:	Mr Emmet Byrnes, Mr Seppi Hona and Ms Mary Coogan

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN 85325).

The licence pertains to the afforestation of a 7.73 ha site and 1,000 m fencing at Lavareen, Derrindrehid, Co. Leitrim. Proposed planting species include Sitka Spruce, Downy Birch and Additional

Broadleaves (Native Woodland). Woody weed removal, mounding, slit planting and manual weed control are proposed. The site is not prone to flooding and is not acid-sensitive to fisheries. It is not within any NHA, is not in a Prime Scenic Area as per the County Development Plan and does not contain an archaeological site or monument. It is stated to be exposed and at 80-100m elevation. It is further stated that there is 22.63% forest cover in the townland, 21.67% forest cover within 5 km of the project lands and 2.3% forest cover in the underlying waterbody.

In processing the application, the DAFM carried out a screening in accordance with the provisions of Article 6(3) of the Habitats Directive. This identified the following Natura 2000 sites – Cuilcagh - Anierin Uplands SAC 000584, Lough Oughter and Associated Loughs SAC 000007 and Lough Oughter Complex SPA 004049. Following examination of the qualifying interests and conservation objectives all were screened out for Appropriate Assessment. In-combination effects considered included planning permission for 3 dwellings/farm buildings, 12 afforestation licences and forest road licences and 12 felling licences, and the DAFM concluded that there was no source, pathway or potential for in combination effects.

The DAFM did not refer the application to external bodies but did refer to a Departmental Archaeologist. The Archaeologist carried out a detailed review and noted that the nearest recorded monument was some 600 m away to the north east of Cloone, that the nearest area of elevated archaeological potential associated with the lake and lake settlements is the former lake/shoreline which is some 120m distant from the boundary of the site, that there are no buildings or structures listed in the Record of Protected Structures (RPS) in the Leitrim County Council Development Plan 2015 to 2021 in the townlands in question and that there are no buildings or structures listed in the National Inventory for Architectural Heritage (NIAH) in the townlands of Derrindrehid and Lavareen. The licence issued on 30/1/2020 subject to the standard conditions.

There is a single appeal against the decision to grant the licence. The grounds are as set out in the Notice of Appeal (incl. earlier letter) of 24/2/2020. The grounds contend that the Minister has not taken full consideration of all his functions under the Habitats Directive. The Bio Map is deficient in not including legally required details – setback distance for hedgerows, drainage and cultivation proposed for different plots. Set back distance for hedgerows are not indicated on the Bio Map and the area calculated indicates less than minimum of 3 m. Areas of Biodiversity Enhancement (ABE) selected are not satisfactorily situated and not consistent with Environmental Requirements for Afforestation. The proposal does not protect and enhance retained habitats throughout the forest rotation. The decision is not consistent with State Aid Decision. The EIA assessment is invalid and did not take account of the site of historical and cultural significance forming part of the site. The EIA screening did not take account of the criteria set out in Annex III of the EIA Directive and this invalidates the screening and determination. There are concerns that the Appropriate Assessment (AA) screening is flawed. The site is hydrologically connected to a number of pNHAs downstream.

In response, the DAFM state that the site was screened for AA. The submitted Bio Map shows all the required features and is acceptable. There is no minimum setback required for hedgerows and the 3 m setback is more than sufficient, adheres to the Standards in the Forest Standards Manual and the 60m setback from dwelling can be used as an ABE area. The application adheres fully to the terms and conditions of the Afforestation Scheme and no site-specific evidence has been provided to substantiate appeal ground relating to State Aid. The site is significantly sub-threshold for EIA. An in-



combination assessment formed part of the Appropriate Assessment screening process, including examination of other forestry related projects in the vicinity. The forest cover in this townland is 22.63% and 2.3% cover in the underlying waterbody. The application was considered by the DAFM's Senior Archaeologist. The nearest Recorded Monument is a crannóg at Lough Donogher, some 600m to the north east of Cloone. The site is not in an Area of Outstanding Beauty or an Area of High Visual Amenity as per the County Development Plan (CDP) nor is it close to a pNHA. The site is in an area with high capacity to accommodate forestry as per the CDP. There is no justification in the statement that "a site of historical and cultural significance which forms part of this site was not taken into account" as part of the EIA screening process. The characteristics, location and type and characteristics of the potential impact of the proposed project were considered. The Appropriate Assessment screening resulted in the production of a detailed list of existing and approved projects. This list was also taken into consideration in making a determination that EIA was not required. The legal requirements of Article 4(3) of the EIA Directive have been fulfilled. No referrals were required for this application. There is no hydrological connection from this site.

The FAC convened an Oral hearing on 15/12/20. The DAFM stated that the proposed application had been desk assessed before the decision had been made. No referral had been made because they were not mandatory in this instance and assessment as per the Standard Operating Procedure was carried out. The Appropriate Assessment screening process adopted at the time had been applied. An EIA screening had been carried out. There were no issues found, no NHA or pNHA and the nearest archaeological site was at a distance of approx. 600 m. A licence with standard conditions was granted. The appellant contended that the site should have been subject to a field check. The appellant referred to an Underwater Heritage Order made in 1990 on the site of crannógs at Lough Donogher and felt that there should have been a referral to an independent archaeological expert. The appellant contended also that there would be an impact on water quality, that an EIA was needed and that there was considerable anger locally because of the level of forestry in the area and around the Lough. In response to FAC queries, the appellant explained that the pNHAs were Loughs Sallagh, Errew and Rinn, and estimated their distance from the site as a few kms. The appellant explained that the site of archaeological significance mentioned by him was known due to local knowledge and was the lake. FAC sought clarification with regard to the contention that there was a flaw in the AA screening and the appellant explained that the pNHAs, amount of forest cover in Leitrim, drainage and water quality issues should have been considered. The FAC queried which Natura sites were of concern to the appellant who advised that Leitrim County Council takes all of these sites very seriously and mentioned Lough Oughter SAC and SPA in particular, mentioned the large stream to Black Lough as well as the presumed presence of small streams and drains. The FAC also queried the appellant on the Minister's Report and any reports regarding forestry in the area. The appellant mentioned the Report entitled The Socio-Economic Impact of Forestry in County Leitrim 2019, commissioned by the Department of Agriculture, Food and the Marine and expressed dissatisfaction with the contents and also mentioned a Mid Term Review of the DAFM's Forestry Programme by the Leitrim Irish Farmers Association with reference to farmers being pushed out by forestry.

The Applicant's representative at the oral hearing gave a short statement on their behalf. The applicant, a local farmer of advanced years with health issues, had no wish to sell but found the land

to be heavy and marginal requiring constant drainage and considered the forestry option as a good alternative for this type of land. He also has a genuine interest in forestry. The representative mentioned that there is no hydrological connection to Lough Donogher, that the setbacks are included on the Bio Map, and that referrals to an archaeologist are required only if within 200m. The Department confirmed to FAC that the licence was approved on 30/1/2020, with the 12 standard conditions attached and no additional conditions. The Department's Forestry Inspector advised that not all sites are field inspected but that the Standard Operating Procedures are followed in all cases whereby the Inspector thoroughly reviews all mapping systems and databases relevant to the site and hydroconnectivity. In this case, he advised that the site was noted for a field inspection at First Instalment Stage (4 years). The Department's archaeologist advised that in this case the nearest recorded monument was over 600m away on Lough Donogher, relating to the crannógs on the SE corner of the lake. He explained that the Underwater Heritage Order made in 1990 on the site of crannógs at Lough Donogher came about as a result of activity by a local farmer, albeit inadvertent. He confirmed that the case did not meet the criteria for referral. FAC queried the applicant regarding the drainage and streams and were advised that the outflow of the stream is not towards Lough Donogher but towards Black Lough and that as regards Loughs Sallagh, Errew and Rinn, as the crow flies these were over 12 kms away and did not qualify to be screened in. He confirmed that any drains or water flow towards the stream and not Lough Donogher. He also advised that there would be no fertiliser applied unless required and that their policy with regard to herbicides was to clean rather than spray and they had a team of full-time site staff to carry this out. The Department's Forester also expressed the opinion that the percentage forest cover in the townland at 22% and at 2.3% in the water catchment area are not excessive. In conclusion the appellant reiterated that the level of forest cover in the county is high, that farmers are being prevented from renting or working the land, that the land of Leitrim is highly rated as an area of High Nature Value and that a study by the National Parks and Wildlife Service/Teagasc rated the area as for biodiversity than for afforestation.

In addressing the issues raised in the written and oral submissions by the appellant, the FAC considered that a number of these related to policy matters. The FAC may have regard to such policies matters in determining appeals coming before it but is not a policy making body in respect of forestry or competing land uses. Furthermore, the FAC has no remit in respect of State Aid matters.

The FAC examined the screening procedures followed by the DAFM before concluding that an EIA is not required in this case. The proposal for afforestation on a site area of 7.73ha and for fencing of 1000 m. It is sub-threshold for mandatory EIA under Irish Regulations which sets a threshold for such mandatory assessment at 50ha. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and characteristics of potential impact arising from the proposed development, to enable a preliminary screening for EIA. In this regard, the FAC noted the detailed information submitted describing the proposed development, submitted information relating to the DAFM archaeologist's detailed review, submitted information relating to the location, forestry coverage in the townland and in the underlying waterbody and the Forestry Inspector's description of the wide array of checks encompassing all relevant spatial, hydrological data included as part of the desk inspection carried out in advance of the making of the decision. The FAC noted that the DAFM had considered other projects, including forestry related projects, in an in-combination assessment. Based on the information before it, the FAC considers that there is no convincing evidence before it to indicate that



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procedures followed by the DAFM in the preliminary screening were flawed or that the conclusion that EIA is not required, is incorrect.

In relation to the Bio Map, the FAC considered the information and evidence before it and concluded that the relevant details including setbacks, ABEs, drainage and cultivation, were covered by the map provided. The appellant contends that a site of historical and cultural significance was not taken into account. The DAFM contend that there is no mandatory referral requirement relating to the archaeological site in this case, the site being in excess of the 200m distance at approx. 600m away. The FAC concludes that the archaeological site has been properly assessed and based on the evidence will not be negatively affected by the proposal. In relation to the hydrological connection with pNHAs, the FAC considered the screening process carried out by the Department and noted that the site is not located close to a pDNA and that no referrals were required. They also noted that according to the Leitrim County Development Plan the proposal is not in an Area of Outstanding Beauty, not in an Area of High Visual Amenity but is in an area with high capacity to accommodate forestry.

The appellant raises concerns that the Appropriate Assessment screening may be flawed but offered no convincing evidence to substantiate these concerns. There are pNHAs in the wider area including Lough Sallagh, Lough Errew, Lough Rinn, but there is no evidence of direct hydrological connection from the project lands and no obvious pathway for any adverse effects on these sites arising from the proposed development. Three Natura sites were screened out by the Department due to lack of hydrological connection, distance, lack of aquatic zone/watercourse within or adjoining the project site and the FAC considers that the appropriate procedures were followed in this regard. The issue of loss of biodiversity was also contested. Having regard to the nature of the proposal, which would convert existing agricultural land to forestry, the FAC concluded that there is likely to be a change in biodiversity over time but that this would not be a reasonable ground for setting aside the Minister's decision to grant the licence.

In deciding to affirm the decision of the Minister to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry practice.

Yours Sincerely,



Paula Lynch on behalf of the FAC